

Council Business Meeting

February 7, 2023

Agenda Item	Authorization of Telecommunication Franchise to Sprint Communications	
From	Douglas M. McGeary	Acting City Attorney
Contact	doug.mcgeary@ashland.or.us	

SUMMARY

This is an amendment to renew a franchise agreement with Sprint Communications Company L.P., now a wholly owned subsidiary of T-Mobile USA, Inc. Other than the dates, this amendment agreement maintains the same terms and conditions utilized in the underlying agreement. The amendment will take effect retroactively to begin on September 30, 2022 and will expire on September 30, 2023.

POLICIES, PLANS & GOALS SUPPORTED

BACKGROUND AND ADDITIONAL INFORMATION

This is a limited use franchise issued under the city's telecommunications ordinance. A limited use franchise is granted to a telecommunications provider that does not directly serve customers within the city. Compensation for the use of the public right of way has been set by Resolution No. 99-70 and is measured, for this type of grantee, by the number of linear feet of public right of way occupied.

The current agreement expired at the end of September 2022, but the parties have agreed to retroactively renew the agreement by amendment starting at September 30, 2022 and terminate the amendment on September 30, 2023 with the intent that the city's small cell ordinance will be complete by that time, which may require adjustments in the agreement going forward in time. The renewed agreement grants the continued use of City right-of-way for 13,000 linear feet of communications infrastructure.

The attached amendment to the agreement is consistent with provisions set forth in Chapter 16 of the Ashland Municipal Code and associated fees outlined in resolution 99-70.

FISCAL IMPACTS

Revenue from Sprint Communications Company is based on fees set forth in resolution 99-70. In 2022 the annual payment from Sprint Communications was \$52,911.00 which is derived from the original minimum fee of \$4,000 from resolution 99-70 and adjusted annually based on the March Consumer Price Index-All Urban Consumers (CPI-U).

DISCUSSION QUESTIONS

SUGGESTED NEXT STEPS

Staff recommends the Council approve the franchise agreement for Sprint Communications Company L.P.

REFERENCES & ATTACHMENTS

Franchise Agreement
Resolution 99-70

AMENDMENT NO. 2
to
FRANCHISE AGREEMENT
between
THE CITY OF ASHLAND,
an Oregon municipal corporation,
("City")
and
SPRINT COMMUNICATIONS COMPANY L.P.,
a wholly owned subsidiary of T-Mobile USA, Inc.,
("Sprint")
for
Telecommunications Services

RECITALS

WHEREAS, Sprint Communications Company L.P., now a wholly owned subsidiary of T-Mobile USA, Inc., currently holds a Franchise Agreement with the City of Ashland effective October 1, 2016 ("Agreement"); and

WHEREAS, Sprint's Agreement with the City expires on September 30, 2022; and

WHEREAS, Sprint provided written notice to the City informing the City of Sprint's desire to renew the existing Agreement or enter into a new franchise with the City; and

WHEREAS, the City desires to update the provisions of the Ashland Municipal Code ("AMC") regarding telecommunications; and

WHEREAS, the City has requested an extension of the existing Agreement while it updates the AMC; and

WHEREAS, it is in the public interest to extend the existing Agreement for an additional period of time.

AGREEMENT

NOW THEREFORE, in consideration of the mutual benefits and obligations set forth herein, the parties agree as follows:

1. The amendment to the Agreement between the City and Sprint is retroactively effective as of September 30, 2022 and is extended through and including September 30, 2023 or after the city decides upon amendments to its Rights-of-Way ordinance and design standards resolutions for telecommunications facilities, which ever date occurs first.

2. This Amendment No. 2 is effective upon being signed by both parties.

3. Except as specifically modified by this Amendment No. 2, the terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF the parties have caused this Amendment No. 2 to be signed in their respective names by their duly authorized representatives as of the dates set forth below:

CITY OF ASHLAND, OREGON

SPRINT COMMUNICATIONS COMPANY L.P.

By: _____
Joseph L. Lessard

By: _____

Title: City Manager

Printed Name: _____

Dated: _____

Title: _____

Dated: _____

Approved as to form



Douglas M McGeary
Acting City Attorney

RESOLUTION NO. 99-70

**A RESOLUTION ADOPTING FEES FOR TELECOMMUNICATION
REGISTRATION, APPLICATIONS, CONSTRUCTION, FRANCHISES
AND OTHER SERVICES UNDER ASHLAND MUNICIPAL CODE
TITLE 16; AND REPEALING RESOLUTION 98-24**

Recitals:

A. The city's telecommunications ordinance adopted in 1998 and codified in Title 16 of the Ashland Municipal Code provides that the city council will set telecommunication franchise fees by resolution.

B. Telecommunication franchise fees are established by the city for the purpose of assuring that the city's current and ongoing costs of granting and regulating private access to, and the use of, public rights-of-way are fully compensated by the persons seeking such access and causing such costs and to secure fair and reasonable compensation to the city and its residents for permitting private use of the public right of way.

C. Recent amendments to Title 16 require that the council set certain other telecommunication-related fees by resolution, and this resolution is intended to implement such Title 16 requirements.

THE CITY OF ASHLAND RESOLVES AS FOLLOWS:

SECTION 1. Registration fee. The registration fee for telecommunication carriers is established in Ashland Municipal Code (AMC) section 16.08.030 as being equal to the license fee for a new business as provided in AMC Chapter 6.04.

SECTION 2. Construction Permit Fee. (AMC § 16.12.070). Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit for construction within the public right of way, the applicant must pay a permit fee equal to \$250.00 or six-tenths of one percent (0.6%) of the estimated cost of constructing the telecommunications facilities, whichever is greater.

SECTION 3. Diminished Pavement Life Fee. (AMC § 16.12.075) For any construction requiring pavement cuts within a public right of way, the amount to be paid to reimburse city for the pavement degradation and shortened pavement life that results from such cuts is established as follows:

For Longitudinal Excavations:

<u>Age of Street Pavement*</u>	<u>Fee</u>
Less than 5 years	\$3.50/linear foot of excavation
Between 5 and 10 years	\$3.00/linear foot
Between 10 and 15 years	\$2.00/linear foot
Over 15 years	\$1.00/linear foot

For Transverse Excavations:

<u>Age of Street Pavement*</u>	<u>Fee</u>
Less than 5 years	\$7.00/linear foot
Between 5 and 10 years	\$6.00/linear foot
Between 10 and 15 years	\$4.00/linear foot
Over 15 years	\$2.00/linear foot

*The age of the street pavement where excavation occurs will be the period of time since the street surface was resurfaced, overlaid or reconstructed, measured from the fiscal year in which such work was completed to the fiscal year when a permit is issued for the excavation.

SECTION 4. Application and Review Fee. (AMC § 16.20.040). Unless otherwise provided in a franchise agreement, the applicant must pay a review fee of \$250.00.

SECTION 5. Franchise Fee. (AMC § 16.24.070) A telecommunications grantee must pay a franchise fee to the city, through the duration of its franchise, as follows:

A. For all grantees except as provided in paragraphs B and C, a fee of 5 percent of gross revenues paid quarterly. The minimum quarterly fee will be \$1,000. Gross revenue is defined in section 16.04.040.L of the Ashland Municipal Code.

B. The franchise fee for a telecommunication utility shall equal 7% of its gross revenue on exchange access services earned within the boundaries of the city.

C. For limited use telecommunications grantees, a minimum annual fee, payable in advance, of \$4,000 or \$1.22 per linear foot of right-of-way used, whichever sum is greater. This fee will increase annually in July of each year, by multiplying the fee by a fraction, the numerator of which is the CPI Index Figure for the month of March preceding the July in which the fee is to be increased and the denominator of which is the Base CPI Index Figure. As used in this section, "Index" refers to the All Urban Consumers (CPI-U), U.S. City Average, CPI index published by the Bureau of Labor Statistics of the United States Department of Labor. "Base CPI Index Figure" will refer to the Index number indicated for the

month of March, 1998, and the "CPI Index Figure" for any other month will refer to the Index number for that month.

Beginning July 1, 2001, the fee will be \$2.50 per linear foot. This fee will increase annually by the CPI Index as set forth above. The base CPI will be March of 1998.

A limited use telecommunication grantee is defined as one whose franchise limits the amount of linear feet the grantee may occupy, or one who has a franchise as of October 1998 for the purpose of long-distance telecommunications.

SECTION 6. Resolution 98-24 is repealed.


This resolution was read by title only in accordance with Ashland Municipal Code

§2.04.090 duly PASSED and ADOPTED this 7 day of December, 1999.



Barbara Christensen, City Recorder

SIGNED and APPROVED this 8 day of December, 1999.


Catherine M. Shaw, Mayor

Reviewed as to form:



Paul Nolte, City Attorney